IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

CRL.A.No. 819 of 2001()

SC.61/1994 of I ADDL. SESSIONS COURT, KOLLAM

.....

APPELLANTS:

---

1. AYYAPPAN ASSARY, S/O.KOCHAPPI ASSARY, IYTHIYIL VAYALILVEEDU, THIRUVALLAM PAKUTHY, VENGANNOOR DESOM.

2. HUMAYOON KABEER, S/O.MUSTHAFA, PANNIVILAPUTHEN VEEDU, ANTHOORKONAM VILLAGE, KANIYAMPURAM DESOM.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENT:

STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKAN.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 15/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 819 OF 2001

Dated this the 15th February, 2007.

J U D G M E N T

Third and Twelveth accused in S.C.No.61/1994, on the file of the I Addl. Sessions Court, Kollam, are the appellants. Altogether 13 accused were alleged to have committed the offence punishable under Sections 489A to 489D of IPC, read with Section 34 IPC. However, accused 2, 10, 11 and 13 were absconding. All the remaining accused faced the trial.

2. The prosecution examined 17 witnesses and marked 15 documents, along with 9 material objects identified. The learned Additional Sessions Judge found the accused 3 and 12 guilty of the offence punishable under Section 489C IPC. All the other accused were acquitted of the offence alleged against them. Hence, accused 3 and 12 are on appeal before this Court.

3. The first accused, a boy, then aged about 16 years, was sent by the second accused, a carpenter, to buy 500 ml. of arrack, from the arrack shop of CW.1, on 22.11.1981. CW.1, who is now no more, found M.O.1, Hundred Rupees denomination note, tendered by

first accused was counterfeit. He, therefore, questioned him, and first accused informed that he was working under the second accused. Second accused was also called in. The arrack shop situated at Kodinada is only about 500 metres away from the Balaramapuram police station. Message was immediately given to the police. PW.1, the Sub Inspector of Police, Balaramapuram police station, reached the arrack shop, and apprehended both accused 1 and 2. He recorded Ext.P2 F.I. statement of CW.1. M.O.1 counterfeit currency note was seized under Ext.P2(a) seizure mahazar. Investigation continued, and M.O.1 was sent to Government Currency Note Press, Nasik, for expert opinion. Ext.P14 report reveal that M.O.1 is a counterfeit currency note of Hundred Rupees denomination.

4. Further investigation was handed over to the CBCID (CFS), Thiruvananthapuram, as Crime No.189/81, which was later re-numbered as Crime No.245/CR/81 of the CBCID (CFS), Thiruvananthapuram.

5. The continued investigation reveal that the 3rd accused was involved in supplying the counterfeit currency notes to the second accused. The second accused also received eight

counterfeit currency notes of Rupees Hundred denomination from the 3rd accused. The same were also seized, at the instance of the second accused, by PW.1, the Sub Inspector.

6. The 3rd accused was arrested near the Mosque at Balaramapuram, at 12.30 p.m. on 23.11.1981. When he was questioned, he made Ext.P3(a) disclosure statement that he is having other counterfeit currency notes, concealed on the wall of his house, at Venganoor desom. On recording the above disclosure statement, and at the instance of the 3rd accused, who led PW.1 and the party to his house, the 3rd accused took out M.O.2, 18 counterfeit currency notes of Rs.100/= denomination, and M.O.3, 86 counterfeit currency notes of Rs.10/= denomination, kept hidden in M.O.4 powder tin, inside the southern wall of his house at veranda. Exts.P14 and P15 are the expert opinion obtained from the Nasik Press, showing that M.Os. 2 and 3, are of counterfeit currency notes.

7. PW.12 is the Sub Inspector of Police, Palode Police Station. He received information on 6.11.1981, at about 2.30 p.m., that two persons were found with counterfeit currency notes, and were transacting with the notes at the Kollayil Junction. On reaching there,

he arrested accused 12 and 13. 12th accused was found in possession of M.O.7, one counterfeit currency note of Rs.100/= denomination, M.O.5 series, 9 counterfeit currency notes of Rs.10/= denomination, M.O.6 series, 40 counterfeit currency notes of Rs.10/- denomination, were found in possession of the 13th accused. Under Ext.P9 seizure mahazar, PW.12, the Sub Inspector of Police, Palode Police Station, seized the entire material objects, and arrested the accused. He also registered Crime No.124/81 of Palode Police Station, which was subsequently made over for investigation to the CBCID, (CFS), Thiruvananthapuram, and accordingly re-numbered as Crime No.238/CR/81 of that investigating agency. It was, during the investigation, that CBCID (CFS), Thiruvananthapuram, found that all the accused were part of a gang, who erected printing press and printed counterfeit currency notes of Rs.10/= and Rs.100/= denominations. All the accused were found involved in both the police stations. Therefore, a consolidated final report was filed, on completion of the investigation before the Local Magistrate. Subsequently, the case was made over to the Sessions Court, Kollam, which conducted the trial.

8. As stated above, among nine accused who faced the trial, the appellants, accused 3 and 12, alone were found guilty, and, therefore, this appeal is filed challenging their conviction and sentence under Section 489C IPC, to undergo rigorous imprisonment for three years each.

9. The learned counsel appearing for the appellants contented that the prosecution has failed to prove the proper possession of the counterfeit currency notes, as well as the ingredients, the intention to use the counterfeit currency notes are genuine or that the said counterfeit currency notes might be used as genuine. The proof required to establish a case against accused under Section 489C IPC are that,

i) The note in question was forged or counterfeited,

ii) that the accused was in possession of the same,

iii) that at the time of the possession of the counterfeit currency note, the possessor knew that the notes were forged or he had the reason to believe the same to be so, and

iv) that the person possessing the counterfeit currency notes intended to use the same as genuine, or that it might be used as genuine.

10. It was on the statement of the second accused that the 3rd accused was arrested by PW.1. As led by the 3rd accused, PW.1, the Sub Inspector, reached the house of 3rd accused. It was the 3rd accused who took out M.O.4 powder tin from the hidden portion of the wall, on the southern side veranda, of his house. On opening the powder tin, it was found containing M.Os. 2 and 3, counterfeit currency notes of Rs.10/= and Rs.100/= denominations respectively. Counsel contented that there is no proper recovery. It is true that Pws.2 and 3, the attestors to the seizure mahazar, did not support the seizure in full. However, the materials available clearly show that Ext.P3, seizure mahazar, was prepared at the place of seizure, and they had attested Ext.P3 in the presence of the accused. Being a local person, if they were won over by the accused or others, the same will not affect the prosecution case, unless there are other circumstances to accept the seizure itself. Therefore, I am unable to accept the contention of the counsel that there was no valid seizure of counterfeit currency notes, M.Os.2 and 3, together with M.O.4, under Ext.P3 seizure mahazar, on the disclosure statement, Ext.P3(a), of the 3rd accused.

11. Exts.P14 and P15 are the expert opinions from the Nasik press, in which it is certified that M.Os.2 and 3 notes are counterfeited notes. Thus, the prosecution has established that M.Os.2 and 3 notes were of counterfeit in nature, the 3rd accused possessed it, and knowing the same to be counterfeit notes, as not only Ext.P3 disclosure statement, but also the mode of concealment, and recovery clearly establish the same.

12. M.Os.5, 6 and 7 are the counterfeit currency notes found possessed by the 12th accused. They were seized under Ext.P9 seizure mahazar, attested by Pws.9 and 10. There was a shift in the stand of these attesting witnesses. But they have accepted the signature in Ext.P9 seizure mahazar. It is also in evidence that Ext.P9 mahazar was prepared at the place where the seizure took place. The presence of the police at the time of the seizure is spoken to by Pws.9 and 10. Although they did not speak about the presence of the 12th accused, other circumstances clearly show that the recovery of M.Os.5, 6 and 7, took place from the 12th accused. Exts.P12 and P13 expert opinions reveal that M.O.s.5, 6 and 7 are counterfeit currency

notes. Thus, as in the case of the 3rd accused, the prosecution has established that M.Os.5,6 and 7 are counterfeit currency notes, the 12th accused possessed it, knowing the same to be counterfeit.

13. The main contention raised by the learned counsel appearing for the appellants is that there was no intention on the part of the appellants to use the counterfeit currency notes as genuine, and, therefore, that ingredient is not proved by the prosecution.

14. The evidence available through the prosecution witnesses clearly show that it was the 3rd accused who gave counterfeit currency notes to the second accused, who in turn handed over to the first accused, an innocent possessor, as observed by the Sessions Court, who was sent to buy arrack from the shop. That was the reason why the first accused was acquitted. The second accused was absconding. However, the evidence available clearly show that the 3rd accused possessed the counterfeit currency notes, M.Os. 2 and 3, and, he was the author of concealment of such counterfeit currency notes, in a peculiar way making a hole on the wall and putting the notes in M.O.4 powder tin, so that he alone knew the act of concealment, as well as the authorship of the same. He kept the same solely for the

purpose that the said counterfeit note might be used as genuine. That was also the case of the 12th accused. He also possessed it fully knowing that they are counterfeit, and could be used as genuine. Therefore, I hold that the prosecution had established all the ingredients required under Section 489C IPC against the appellants, accused 3 and 12. Therefore, I uphold the conviction of the appellants, accused 3 and 12, by the learned Sessions Judge, under Section 489C IPC.

15. At this stage, the learned counsel appearing for the appellants submitted that the sentence of rigorous imprisonment for three years is excessive. No defence evidence has been adduced by the accused. During Section 313 Cr.P.C. statement, nothing has been stated, so as to consider any of the mitigating circumstances, as being now argued by the counsel. It is true that the 12th accused stated that he has been unnecessarily arrayed as accused, but except this bald statement, there is no defence evidence adduced by him. Counsel submits that the occurrence took place in the year 1981. The judgment was pronounced in the year 1994. Except these two persons, all others were acquitted. Four other accused are still absconding. These two appellants were undergoing the mental torture

and ordeal for these long years, not only because of the registration of the crime, the investigation, the trial and conviction, but are waiting on a threat of the sentence, that has to be imposed on them, on the mercy of this Court.

16. Dealing with counterfeit currency has to be viewed very seriously, for the same would adversely affect the economy of the State. Although the other accused are acquitted, the materials available show that these accused have set up a press and printed the currency notes. But the evidence available reveal that these two appellants were the possessors of counterfeit currency notes.

17. Considering the entire facts that are placed before me, I am of the opinion that the sentence of rigorous imprisonment for three years could be modified and reduced to that of rigorous imprisonment for one year each.

In the result, the appeal is partly allowed. The sentence of rigorous imprisonment for three years each under Section 489C IPC is reduced to that one year each. The Additional Sessions Court, Kollam, is directed to issue fresh warrant against the accused, appellants, and take urgent steps to execute the sentence.

J.M. JAMES,
JUDGE

nj.